

REMARKS

Applicants have carefully reviewed the Office Action mailed on July 3, 2008. Applicants respectfully traverse (and do not concede) all objections, rejections, adverse statements, and adverse assertions made by the Examiner. With this amendment, claim 15 is amended. No new matter is added. Please cancel claim 4 without prejudice. Claim 15 remains pending.

Claim Rejections Under 35 U.S.C. §102

Claims 15 is rejected under 35 U.S.C. §102(e) as being anticipated by Grayzel et al. in U.S. Patent No. 6,942,680. Applicants respectfully traverse the rejection. Nonetheless, in the interest of furthering prosecuting claim 15 is amended to recite that the cutting blade means for cutting has two intersecting planes that form a cutting edge. Claim 15 additionally recites that the cutting blade includes undulations that curve from side-to-side. The Examiner indicated that Grayzel et al. "discloses undulations [that] curve from side-to-side relative to the longitudinal axis (16; col 10; Figs 6a-10g)." Of the cited figures, only Z-shaped member 510 in Figure 9H and possibly sawtooth member 500 in Figure 9G appear to have any structure whatsoever that may be interpreted to bear undulations that curve from side-to-side. However, in order for these structures to have the required undulations that curve from side-to-side, they would need to lay flat on the surface of the balloon (as shown in Figures 9G and 9H). When positioned as shown, however, these structures do not have two intersecting planes that form a cutting edge. Instead, the top surface appears to be flat or planar. Based on this distinction, Applicants respectfully submit that amended claim 15 is patentable over Grayzel et al.

Claim Rejections Under 35 U.S.C. §103

Claim 4 is rejected under 35 U.S.C. §103(a) as being unpatentable over Grayzel et al. in view of Lary in U.S. Patent No. 6,306,151. Without conceding the merits of the rejection, please note that claim 4 is now cancelled without prejudice, rendering the rejection moot. Applicants reserve the right to pursue this claim or claims of a similar scope in the future.

Claims 4 and 15 are rejected under 35 U.S.C. §103(a) as being unpatentable over Vigil et al. in U.S. Patent No. 5,320,634 in view of Parodi in U.S. Patent No. 5,250,070. As indicated above, claim 4 is now canceled rendering the rejection thereof moot. Regarding claim 15, the

Examiner indicated in the Response to Arguments section that “[t]he teachings of Parodi can be properly applied to the cutting members of Vigil et al.” because the “teachings of Parodi clearly indicate that the ribs (7) are structured to cut and break up lesions during angioplasty dilation treatment”. We respectfully disagree and request withdrawal of the rejection.

The Supreme Court held in *KSR Int'l Co. v. Teleflex Inc.* (550 U.S. __ 2007) that:

[i]t can be important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does. This is so because inventions in most, if not all, instances rely upon building blocks long since uncovered, and claimed discoveries almost of necessity will be combinations of what, in some sense, is already known.

Emphasis added; see page 15 of the April 30, 2007 Slip Opinion. Finally, in quoting *In re Kahn*, 441 F. 3d 977, 988 (CA Fed. 2006), the Court went on to state that:

“[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness”.

Emphasis added; see page 14 of the April 30, 2007 Slip Opinion. The Court made clear that an obviousness rejection requires some articulated reason of why one skilled in the art would have been prompted to combine the elements on the claimed matter. In this case, it appears as though the Examiner is attempting to say that one of ordinary skill in the art looking to improve a cutting blade (e.g., as in Vigil et al.) would turn to structures in Parodi that are aimed at lessening trauma to the arterial wall. This appears to be a contradiction. Such a combination cannot be considered as having a rational underpinning as it would be akin to looking to a structure for heating as being the rational source for rendering an art device more suitable for cooling. Based on this distinction, Applicants respectfully submit that a *prima facie* case of obviousness has not been properly established and the rejection should be withdrawn in due course.

Furthermore, as indicated above, claim 15 is amended to recite that the means for cutting has two intersecting planes which form a cutting edge. Neither Vigil et al. nor Parodi teach or suggest a cutting blade that includes both a cutting edge formed by two intersecting planes and undulations that curve from side-to-side. Based on this distinction, Applicants respectfully submit that claim 15 is patentable over the combination of Vigil et al. and Parodi, to the extent that such a combination is even possible.

Conclusion

Reexamination and reconsideration are respectfully requested. It is respectfully submitted that all pending claims are now in condition for allowance. Issuance of a Notice of Allowance in due course is requested. If a telephone conference might be of assistance, please contact the undersigned attorney at (612) 677-9050.

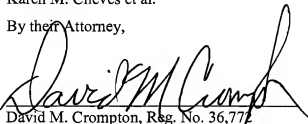
Respectfully submitted,

Karen M. Cheves et al.

By their Attorney,

Date: _____

10/3/08

A handwritten signature in black ink, appearing to read "David M. Crompton", is written over a horizontal line.

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